

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JUANA C.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D042635

(San Diego County  
Super. Ct. No. J514-193A,B,C)

PROCEEDINGS in mandate after reference to a Welfare and Institutions Code section 366.26 hearing (all statutory references are to the Welfare and Institutions Code unless otherwise specified). Susan D. Huguenor, Judge. Petition denied.

Juana C., the mother of A. R., age 7, J. R., age 5, and F. R., Jr., age 2, filed this petition for extraordinary writ (§ 366.26, subd. (I); Cal. Rules of Court, rule 39.1B),

challenging the juvenile court's ruling that terminated reunification services after 18 months and set the section 366.26 permanency planning hearing. Juana contends substantial evidence did not support the court's finding of a substantial risk of detriment if the children were returned to her care.

We issued an order to show cause, the San Diego County Health and Human Services Agency (HHSA) responded, and the parties waived oral argument. We review the petition on the merits and deny it.

#### PROCEDURAL AND FACTUAL BACKGROUND

In October 2001 police arrested Juana for being intoxicated and engaging in domestic violence; she was later released to the custody of the Immigration and Naturalization Service.<sup>1</sup> One week later, the father, Franklin R., Sr., (Franklin) told HHSA that he wanted to temporarily relinquish his children because he was disabled and financially unable to provide for them. Daughter A. told a social worker the family home was full of rats, cockroaches and fleas. A. also said Juana hit her a lot with a belt and hit Franklin.

On November 9 HHSA filed petitions on behalf of A., J. and F. pursuant to section 300, subdivision (b), alleging the children were at substantial risk of harm as a result of being exposed to domestic violence, Juana's excessive drinking, and living in a severely filthy home. The next day, the court found a prima facie showing had been made and

---

<sup>1</sup> The domestic violence charge was dropped after the investigation showed the combat was mutual.

ordered the children detained at Polinsky Children's Center. Counsel was appointed for Juana, who was not present.

On December 17 Juana also was not present when the juvenile court made true findings on the petitions. The court ordered the children placed in foster homes and ordered reunification services for the parents. Juana's case plan included general counseling, a parenting class, a domestic violence class and substance abuse treatment.

Juana was deported to Mexico, but returned to the United States in February 2002 and resumed her relationship with Franklin. Juana was homeless and did not have the documents to work legally in this country. However, upon her return, Juana visited the children on a regular basis and acted appropriately during the visits. She also began to participate in her reunification services and enrolled in the Substance Abuse Recovery Management System (SARMS). In May Franklin was deported to his native Honduras. Juana planned to move in with her pastor and his family.

Juana made her first court appearance at the six-month review hearing in June. The court found Juana had made substantial progress in alleviating or mitigating the causes for removal of the children and ordered six more months of services. In August Franklin returned from Honduras and resumed visits with the children and work on his case plan. Juana and Franklin decided to end their relationship.

The social worker's report for the 12-month review hearing noted that Juana had complied with the case plan but displayed poor judgment at times. For example, Juana brought a man with her to a visit with the children, which upset them. Juana also was dismissed from her substance abuse treatment program for not complying with the

program's confidentiality rules. At the review hearing in December, the court ordered six more months of services. The court found Juana had made good progress in alleviating the causes for the removal of the children.

For the 18-month review hearing, HHSA initially recommended the children be placed with Juana and that services be continued. Juana had secured housing in St. Vincent de Paul's family section. However, counsel for the children disagreed with the recommendation and set the 18-month permanency review hearing on the contested calendar.

In June 2003 HHSA recommended the court terminate services and set a section 366.26 hearing. The change in HHSA's recommendation was prompted by A.'s disclosure to her therapist that Juana had told her that Franklin killed her little brother K. by suffocating him with a pillow. When the social worker asked Juana about this, Juana said she had never told A. about her son K., who suffered a cardiac arrest and died in 1997 in Mexico at the age of three months. Juana speculated A.'s older half-brother may have told her about the incident because he always blamed Franklin for K.'s death. Juana admitted there were indications that Franklin had something to do with the infant's death, including her knowledge that he did not like male children because a male sexually molested him as a child. However, Juana dismissed the suggestion Franklin was responsible after the doctor said K. died from cardiac arrest and lack of oxygen.

When asked why she left her male children alone with Franklin if she had suspicions, Juana responded that at the time she did not know any better, and she was a co-dependent of Franklin and afraid of him. Juana had not disclosed information about

K. to the social worker in March when the subject of A. having a brother who died came up after A. wrote about her family in school. Juana said she did not mention K. because the social worker did not specifically ask about K. and she did not have a reason to talk about it since it happened a long time ago in Mexico.

The social worker also was concerned because Juana fell asleep during a May visit with the children and the room was locked. F. would have injured himself but for the intervention of J. During another visit in May, A. urinated on herself, which was unusual. The foster mother expressed concern that the children had no access to a restroom during unsupervised visits because they told her that Juana instructed them to relieve themselves behind parked automobiles.

After receiving HHSA's changed recommendation, Juana set the 18-month review hearing for trial. However, on the day of the trial, July 30, Juana submitted on HHSA's reports. The court terminated reunification services and set a section 366.26 hearing.

## DISCUSSION

Initially, we address HHSA's waiver argument — namely, that Juana has waived her right to challenge the court's order by withdrawing her request for a contested hearing and submitting on the social worker's reports. We reject HHSA's argument.

A parent waives his or her right to challenge a juvenile court's order when the parent submits the matter on the social worker's recommendation. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589-590.) By submitting on the recommendation, the parent is in effect endorsing the court issuing findings and orders based on the recommendation. (*Id.* at p. 589.) The court in *In re Richard K.*, *supra*, 25 Cal.App.4th 580, distinguished a

parent's submission on the social worker's recommendation from a parent's submission on a social worker's report, noting that the latter does not constitute a waiver of the parent's right to challenge the sufficiency of the evidence. (*Id.* at p. 589.)

Here, Juana did not submit on HHSA's recommendations. Rather, Juana explicitly submitted on the social worker's reports for the 18-month review hearing — the original status review report and the addendum report. By submitting to the reports, Juana gave up her rights to cross-examine the social worker and to call witnesses. "Such a submission acted as consent to allow the court to consider the report[s] as the only evidence in determining [the issues]." (*In re Ricardo L., Jr.* (2003) 109 Cal.App.4th 552, 565.) We note the original report by the social worker was favorable to Juana as opposed to the addendum. We conclude that Juana did not waive the right to seek review.

Juana contends the court's finding that returning the children to her would create a substantial risk of detriment was not supported by substantial evidence. We disagree.

At the 18-month review hearing, the court shall order the return of the child to the physical custody of the parent unless the court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. (§ 366 .22, subd. (a).) In making its determination, the court reviews and considers the social worker's reports and recommendations, the parent's efforts or progress, and the extent to which the parent participated in the services provided. (*Ibid.*) However, "the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child." (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.)

Given the juvenile court's wide discretion in ruling at the 18-month review, appellate courts will uphold the juvenile court's finding of detriment if it is supported by substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) To determine whether there is substantial evidence to support the trial court's findings, we review the evidence in a light most favorable to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Even though Juana had complied with much of her reunification plan, the juvenile court reasonably could conclude that returning the children to Juana would be detrimental to their physical and emotional well-being based on the evidence before the court. A reunification plan is not just a checklist, with items to be checked off as they are completed. Rather, a reunification plan is an integrated plan with an overriding goal of ensuring the children can be safely returned to their parent's care. For example, a parenting class may be helpful in teaching a parent certain skills, but unless the parent can apply what he or she has learned, completion of the class does not guarantee success. In other words, the parent must be able to apply what has been learned; otherwise, the risk of detriment remains.

The record shows that after receiving 18 months of services, Juana had not developed a clear understanding of how to adequately supervise and protect her children. Juana did not comprehend the danger of leaving her children alone with Franklin even though he had abused his stepson and there were indications he may have killed his son K. Rather than be open about disturbing incidents, Juana failed to disclose them and then

offered poor excuses. Juana demonstrated that she lacked the insight to safely parent her children. Juana minimized her parenting limitations and exercised poor judgment regarding her children. Falling asleep during a visit with her children, including a one-year-old child, presented protective issues. Instructing the children to relieve themselves outside on the street is not sound parenting.

In sum, there was substantial evidence that there was a substantial risk of detriment if the children were returned to Juana.

#### DISPOSITION

The petition is denied.

---

BENKE, J.

WE CONCUR:

---

McCONNELL, P. J.

---

HUFFMAN, J.